
20160902000320640 1/8 \$36.00
Shelby Cnty Judge of Probate, AL
09/02/2016 01:28:41 PM FILED/CERT

This instrument prepared by and after
recording should be returned to:
Austin A. Averitt, Esq.
Butler Snow LLP
One Federal Place, Suite 1000
1819 Fifth Avenue North
Birmingham, Alabama 35203
(205) 297-2225

STATE OF ALABAMA)

COUNTY OF SHELBY)

NON-ENCUMBRANCE AGREEMENT

THIS NON-ENCUMBRANCE AGREEMENT (the “**Agreement**”) is delivered and effective as of August 31, 2016, by **SPARTAN VALUE INVESTORS, LLC**, an Alabama limited liability company, **SPARTAN INVEST, LLC**, an Alabama limited liability company (individually and collectively, the “**Borrower**”), for the benefit of **FIRST COMMERCIAL BANK**, a division of Synovus Bank, a Georgia state banking corporation (together with its successors or assigns, the “**Bank**”).

WHEREAS, pursuant to that certain Credit Agreement of even date herewith by and between Borrower and Bank (as amended, the “**Credit Agreement**”; together with this Agreement and all other documents, agreements and instruments executed and delivered in connection therewith, collectively, the “**Loan Documents**”; capitalized terms used herein and not otherwise defined herein shall have the meanings ascribed in the Credit Agreement), Bank is making available to Borrower a series of credit facilities in the aggregate original principal amount of up to Five Million and No/100 Dollars (\$5,000,000.00) (as amended, renewed, restated, extended or refinanced, collectively, the “**Loan**”);

WHEREAS, as a condition precedent of the origination of the Loan, Bank requires that Borrower execute and deliver this Agreement.

NOW, THEREFORE, in consideration of the Loan and for other good and valuable consideration, the receipt and sufficiency of which hereby are acknowledged, Borrower agrees as follows:

1. **No Transfer or Encumbrance of the Land.** Borrower is the owner in fee simple of the parcel of real estate described on Exhibit A and all improvements thereon (as may be amended, collectively, the “**Land**”). Borrower acknowledges that Bank has examined and relied on the creditworthiness of Borrower in agreeing to make the Loan, and that Bank will continue to rely on Borrower’s ownership of the Land as a means of maintaining the value of the Land and Borrower’s ability to pay the Loan. Borrower acknowledges that Bank has a valid interest in maintaining the value of the Land. Borrower shall not, without the prior written consent of Bank, which consent shall be determined in Bank’s sole and absolute discretion, sell, convey, alien, assign, mortgage, encumber, pledge or otherwise transfer the Land or any part thereof, or permit the Land or any part thereof to be sold, conveyed, aliened, assigned,

mortgaged, encumbered, pledged or otherwise transferred. The foregoing prohibitions shall apply to any and all acts or omissions so described, without regard to whether such acts or omissions may occur voluntarily or involuntary or by operation of law or otherwise.

2. **Insurance.** Borrower shall keep, or cause to be kept, the Land insured against loss or damage by fire, extended coverage perils, vandalism, malicious mischief, and any such other hazards, casualties, or other contingencies as from time to time may be required by Bank in such manner and in such companies and amounts as Bank may approve. All such insurance shall be replacement cost coverage rather than actual cash value coverage. Borrower shall also maintain commercial general liability insurance in such amounts as Bank may reasonably require. Borrower shall cause, upon Bank's request therefor, duplicate originals of any and all such insurance policies to be deposited with Bank. At least thirty (30) days prior to the date the premiums on each such policy or policies shall become due and payable, Borrower shall, upon Bank's request therefor, furnish to Bank evidence of the payment of such premiums. Borrower agrees that Borrower will not take any action or fail to take any action, which action or inaction would result in the invalidation of any insurance policy required hereunder. Borrower shall give immediate notice in writing to Bank of any loss or damage to the Land caused by any casualty. If Borrower fails to keep the Land insured as above specified, Bank may at its option and sole discretion, and at Borrower's expense, insure the Land for its insurable value against loss by fire, wind and other hazards as specified above for the sole benefit of Bank.

3. **Taxes and Assessments.** Borrower will pay all taxes and assessments against or affecting the Land as the same shall become due and payable, and, if Borrower fails to do so, Bank may pay them, together with all costs and penalties thereon, at Borrower's expense. Notwithstanding the foregoing, Borrower may in good faith by appropriate proceedings contest the validity of such taxes and assessments and, pending such contest, Borrower shall not be deemed in default hereunder due to such nonpayment if (i) prior to delinquency of the asserted tax or assessment, Borrower furnishes Bank an indemnity bond, and (ii) Borrower promptly pays any amount adjudged by a court of competent jurisdiction to be due, with all costs, penalties and interest thereon, before such judgment becomes final.

4. **Waste, Demolition, Alteration, Replacement or Repair of Land.** Borrower shall cause the Land and every part thereof to be maintained, preserved, kept safe and in good repair, and in good working condition. Borrower shall not commit or permit waste thereon. Borrower shall not remove, demolish or alter the design or structural character of the Land or the Land now or hereafter erected on the Land without the express prior written consent of Bank. Borrower shall comply with all laws and regulations of any governmental authority with reference to the Land and the manner and use of the same, and shall from time to time make all necessary and proper repairs, renewals, additions and restorations thereto so that the value and efficient use thereof shall be fully preserved and maintained. Borrower will discharge all claims for labor performed and material furnished therefor, and will not suffer any lien of mechanics or materialmen to attach to any part of the Land. Borrower agrees not to remove any of the fixtures included in the Land without the express prior written consent of Bank and unless the same is immediately replaced with like property of at least equal value and utility.

5. **Access.** Bank and other persons authorized by Bank shall have access to and the right to enter and inspect the Land at all reasonable times, and upon reasonable notice to Borrower, including monthly inspections if deemed necessary by Bank. In the event Bank finds that Borrower is not maintaining the Land as referenced herein, Bank shall notify Borrower in writing of the needed repairs and Borrower shall have twenty (20) business days to make satisfactory arrangements to bring the Land back to good condition. If after such time, satisfactory arrangements have not been made to bring the Land back to good condition as determined by the reasonable discretion of Bank, Bank shall have the right to make the repairs required at the expense of Borrower as previously enunciated in this Agreement, or shall have the right to declare the Loan to be at once due and payable.

6. **Hold Harmless.** Borrower will defend, at its own cost and expense, and hold Bank harmless from, any proceeding or claim affecting the Land. All costs and expenses incurred by Borrower in protecting its interest hereunder, including all court costs and reasonable attorneys' fees, shall be borne by Borrower.

7. **Notices by Governmental Authority, Fire and Casualty Losses, Etc.** Borrower shall timely comply with and promptly furnish to Bank true and complete copies of any official notice or claim by any governmental authority pertaining to the Land. Borrower shall promptly notify Bank of any fire or other casualty or any notice or taking of eminent domain action or proceeding affecting the Land.

8. **Recording and Filing.** This Agreement and all applicable Loan Documents and all amendments, supplements and extensions thereto and substitutions therefor shall be recorded, filed, rerecorded and refiled in such manner and in such places as Bank shall reasonably request, and Borrower will pay all such recording, filing, rerecording and refiling fees, title insurance premiums, and other charges.

9. **Termination.** If (A) Borrower shall pay and satisfy in full (i) the Loan and any and all other sums payable under the Credit Agreement and the Loan Documents and any and all extensions and renewals of the same (including future advances) and there shall be no additional commitment or other obligation of Bank to fund any additional moneys or other obligations thereunder; and (ii) all sums becoming due and payable by Borrower under the terms of this Agreement and the Loan Documents, including but not limited to advances made by Bank pursuant to the terms and conditions of this Agreement; (B) have kept and performed each and every obligation, covenant, duty, condition and agreement herein imposed on or agreed to by Borrower; and (C) pay and satisfy all Loan Obligations and all other liabilities and obligations of any kind under the Loan Documents; then this Agreement shall become null and void and Bank in such case shall, upon the request of Borrower and at Borrower's expense, deliver to Borrower proper instruments acknowledging termination of this Agreement; otherwise, this Agreement shall remain in full force and effect.

10. **Notice and Addresses for Notices.** All notices, requests, demands and other communications provided for hereunder shall be in writing and mailed or hand delivered to the applicable party at the following address:

If to Borrower:

Spartan Value Investors, LLC
Spartan Invest, LLC
1110 23rd Street South
Birmingham, Alabama 35205
Attention: Clayton Mobley

If to Bank:

First Commercial Bank, a division of Synovus Bank
Attention: Mike Crane
800 Shades Creek Parkway
Birmingham, Alabama 35209
Phone: (205) 868-4942
Email: michaelcrane@firstcommercialbank.com



20160902000320640 4/8 \$36.00
Shelby Cnty Judge of Probate, AL
09/02/2016 01:28:41 PM FILED/CERT

with a copy to:

David R. Kinman, Esq.
Butler Snow LLP
One Federal Place
1819 Fifth Avenue North, Suite 1000
Birmingham, Alabama 35203

or at such other address as shall be designated by such party in a written notice to the other party thereto. Any such notice shall be deemed received three (3) days after properly posting and addressing and depositing said letter in the United States Postal Service, certified mail return receipt requested.

11. Joint and Several Obligations. The liabilities and obligations of each Borrower hereunder and under each other Loan Document shall be joint and several.


12. CONTROLLING LAW. BORROWER AGREES THAT THE VALIDITY, INTERPRETATION, ENFORCEMENT AND EFFECT OF THIS AGREEMENT SHALL BE GOVERNED BY, AND CONSTRUED IN ACCORDANCE WITH, THE LAWS OF THE STATE OF ALABAMA AND BORROWER SUBMITS (AND WAIVES ALL RIGHTS TO OBJECT) TO THE EXCLUSIVE PERSONAL JURISDICTION OF THE COURTS OF THE STATE OF ALABAMA IN JEFFERSON COUNTY, ALABAMA FOR THE ENFORCEMENT OF ANY AND ALL OBLIGATIONS UNDER THE LOAN DOCUMENTS EXCEPT THAT IF ANY SUCH ACTION OR PROCEEDING ARISES UNDER THE CONSTITUTION, LAWS OR TREATIES OF THE UNITED STATES OF AMERICA, OR IF THERE IS A DIVERSITY OF CITIZENSHIP BETWEEN THE PARTIES THERETO, SO THAT IT IS TO BE BROUGHT IN A UNITED STATES DISTRICT COURT, IT SHALL BE BROUGHT IN THE UNITED STATES DISTRICT COURT FOR THE NORTHERN DISTRICT OF ALABAMA OR ANY SUCCESSOR FEDERAL COURT HAVING ORIGINAL JURISDICTION.

13. Jury Trial Waiver. BORROWER HEREBY WAIVES TRIAL BY JURY IN ANY ACTION, PROCEEDING, CLAIM, OR COUNTERCLAIM, WHETHER IN CONTRACT OR TORT, AT LAW OR IN EQUITY, ARISING OUT OF OR IN ANY WAY RELATED TO THIS AGREEMENT OR THE LOAN DOCUMENTS.

[Signature Page to Non-Encumbrance Agreement]

IN WITNESS WHEREOF, the undersigned have hereunto set its signature and the seal of Borrower effective as of the date set forth above.

SPARTAN VALUE INVESTORS, LLC, an
Alabama limited liability company


20160902000320640 5/8 \$36.00
Shelby Cnty Judge of Probate, AL
09/02/2016 01:28:41 PM FILED/CERT

By:


Clayton Mobley

Its:

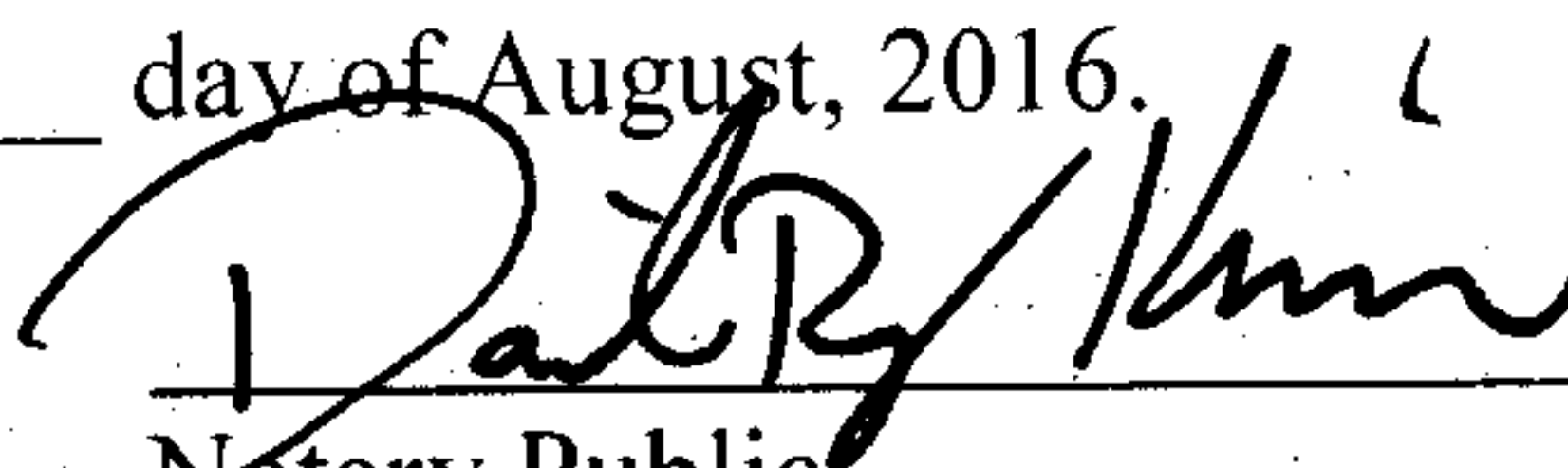
Manager

STATE OF ALABAMA)

COUNTY OF JEFFERSON)

I, David Ray Kinner, a Notary Public in and for said County in said State, hereby certify that Clayton Mobley, whose name as Manager of Spartan Value Investors, LLC, an Alabama limited liability company, is signed to the foregoing agreement, and who is known to me, acknowledged before me on this date, that being informed of the contents of said agreement, he, as such Manager and with full authority, executed the same voluntarily for and as the act of said limited liability company.

Given under my hand this the 31st day of August, 2016.


Notary Public

[AFFIX SEAL]

My commission expires: 9/25/2017

[SIGNATURES CONTINUE ON FOLLOWING PAGE]

[Signature Page to Non-Encumbrance Agreement]



20160902000320640 6/8 \$36.00
Shelby Cnty Judge of Probate, AL
09/02/2016 01:28:41 PM FILED/CERT

SPARTAN INVEST, LLC, an Alabama limited liability company

By:

Clayton Mobley

Its:

Manager

STATE OF ALABAMA)

COUNTY OF JEFFERSON)

I, David Roy Kimer, a Notary Public in and for said County in said State, hereby certify that Clayton Mobley, whose name as Manager of Spartan Invest, LLC, an Alabama limited liability company, is signed to the foregoing agreement, and who is known to me, acknowledged before me on this date, that being informed of the contents of said agreement, he, as such Manager and with full authority, executed the same voluntarily for and as the act of said limited liability company.

Given under my hand this the 3rd day of August, 2016.

David Roy Kimer
Notary Public

[AFFIX SEAL]

My commission expires: 9/25/2017

EXHIBIT A

LEGAL DESCRIPTION

Parcel 1

Lot 1023, according to the Map of Highland Lakes 10th Sector, Phase I, as recorded in Map Book 26, Page 27, In the Probate Office of Shelby County, Alabama.

Parcel 2

Lot 2208, according to the Survey of Riverchase Country Club, 22nd Addition, as recorded in Map Book 9, Page 124, in the Probate Office of Shelby County, Alabama.

Parcel 3

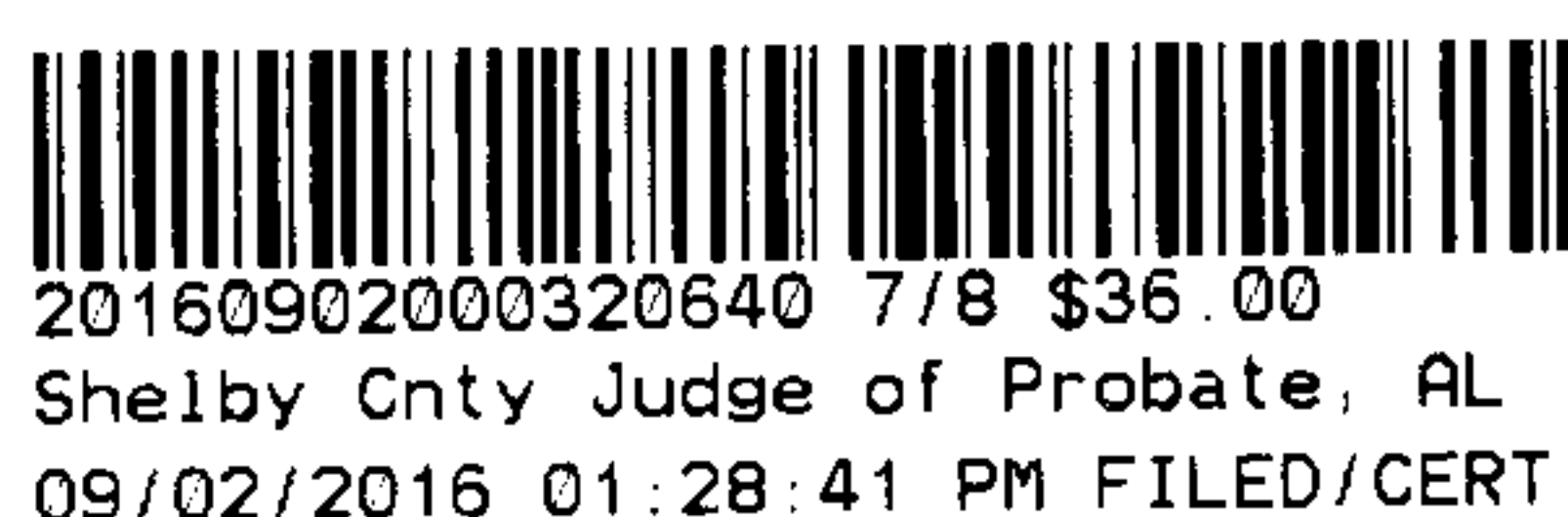
Lot 5, Block 2, according to the Survey of Columbiana Homes, Inc., as recorded in Map Book 3, Page 82, In the Probate Office of Shelby County, Alabama.

Parcel 4

Unit 17-1, in Windhover, a Condominium located at Old Rocky Ridge Road, Jefferson County, Alabama, as established by Declaration of Condominium, recorded on July 23, 1975, in Real Volume 1197, Page 689, in the Probate Office Of Jefferson County, Alabama, and in Misc. Book 12, Page 1, in the Probate Office of Shelby County, Alabama, as amended by Amendments of Declaration of Condominium recorded in Real Volume 1200, Page 637, in Real Volume 1385, Page 91, in Real Volume 1388, Page 152, in Real Volume 1564, Page 374, in Real Volume 1573, Page 594, in Real Volume 1632, Page 85 and in Real Volume 1632, Page 93, in the Probate Office of Jefferson County, Alabama, and in Misc. Book 12, Page 196, in Misc. Book 18, Page 28, in Misc. Book 18, Page 163, in Misc. Book 24, Page 465 in Misc. Book 24, Page 468, in Misc. Book 26, Page 329, and in Misc. Book 26, Page 337, in the Probate Office of Shelby County, Alabama; together with an undivided interest in the common elements of Windhover, a Condominium, as set out In Exhibit "B" attached to said Declaration of Condominium, as to may have been or may hereafter be amended pursuant to said Declaration; said unit being more particularly detailed in the plans and drawings of said Condominium as recorded in Map Book 107, Page 26, in the Probate Office of Jefferson County, Alabama, and in Map Book 6, Page 52, in the Probate Office of Shelby County, Alabama, as amended by revised or supplemental plans recorded in Map Book 107, Page 32, in Map Book 111, Page 34, in Map Book 115, Page 5, in Map Book 116, Page 76 and in Map Book 116, Page 77, in the Probate Office of Jefferson County, Alabama, and in Map Book 6, Page 55, in Map Book 6, Page 133, in Map Book 7, Page 41, and in Map Book 7, Page 81 and in Map Book 7, Page 82, in the Probate Office of Shelby County, Alabama.

Parcel 5

Lot 174, according to the Survey of Waterford Village, Sector 4, as recorded In Map Book 33, Page 86, in the Probate Office of Shelby County, Alabama.



Parcel 4

BEING KNOWN AND DESIGNATED AS: FROM THE NE CORNER OF THE NW 1/4 OF THE NE 1/4 OF SECTION 21, TOWNSHIP 19 SOUTH, RANGE 2 WEST, RUN WESTERLY ALONG THE NORTH BOUNDARY LINE OF THE SAID NW 1/4 OF THE NE 1/4 OF SECTION 21, TOWNSHIP 19 SOUTH, RANGE 2 WEST FOR 361.5 FEET TO THE POINT OF BEGINNING OF THE LAND HEREIN DESCRIBED AND CONVEYED; THENCE CONTINUE WESTERLY ALONG THE NORTH BOUNDARY LINE OF SAID 1/4 – 1/4 SECTION FOR 199.25 FEET; THENCE TURN AN ANGLE OF 92 DEGREES 07 MINUTES TO THE LEFT AND RUN SOUTHERLY 208.71 FEET; THENCE TURN AN ANGLE OF 87 DEGREES 49 MINUTES 40 SECONDS TO THE LEFT AND RUN EASTERLY 199.05 FEET; THENCE TURN AN ANGLE OF 92 DEGREES 07 MINUTES TO THE LEFT AND RUN NORTHERLY 208.71 FEET TO THE POINT OF BEGINNING; BEING A PART OF THE NE 1/4 OF THE NW 1/4 OF THE NE 1/4 OF SECTION 21, TOWNSHIP 19 SOUTH, RANGE 2 WEST.



20160902000320640 8/8 \$36.00

Shelby Cnty Judge of Probate, AL

09/02/2016 01:28:41 PM FILED/CERT